

REMARKS

Applicants respectfully request entry of the above amendments and consideration of the following remarks pursuant to 37 C.F.R. § 1.111.

1. Status of the Claims

Claims 1-24 are pending. Claims 1-24 stand rejected.

After entry of the above amendments, claims 7 and 12-19 stand canceled and claims 1-6, 8-11, and 20-32 stand pending. Claims 25-32 are new claims. Applicants have amended Claims 1-6, 8, 23, and 24. Support for the amendments to claim 1 can be found at least for example on page 11, lines 14-24 and Example 4. Support for the amendments to claims 2-3 and new claims reciting flaxseed residue can be found at least for example on pages 6-7. Support for the amendments to claims 4 and 5 can be found at least by the original claims. Support for the amendments to claims 6 and 8 can be found at least for example on page 11, lines 1-7 and the original claims. Support for the amendments to claims 23 and 24 can be found at least in the original claims.

Support for new claims 25-32 can be found in the specification at least on page on page 9, lines 15-18 and Example 1 (claim 25); page 9, line 14 (claim 26); page 10, lines 17-20 and Example 1 (claim 27); pages 6-7 (claims 28-29); original claim 5 (claim 30); page 9, lines 14 and original claims (claim 31); page 10, lines 17-20 and Example 1 (claim 32); and original claims (claims 33-35).

Thus, the amendments to the claims and the new claims do not introduce any prohibited new matter. The amendments to the claims are have been made without prejudice to or disclaimer of the subject matter that has been canceled by way of amendment. Applicants reserve the right to file a continuation or divisional application on any of the canceled subject matter.

2. Information Disclosure Statements

Applicants note with appreciation the acknowledgement of the Information Disclosure Statements filed September 10, 2004, and September 30, 2005.

3. Acknowledgement of Certified Priority Document(s)

Applicants note with appreciation the acknowledgement of the previously filed Certified Priority Documents.

4. Rejection of the Claim Under 35 U.S.C. § 112, Second Paragraph

Claims 7-8, and 23-24 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Claims 7-8. The Office alleges that Claims 7-8 are vague and indefinite because of the recitation of “a material.” The rejection is mooted with the cancellation of claim 7 and the amendment of claim 8, which no longer recites material. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 23. The Office alleges that Claim 23 is indefinite for the use of “such as.” Applicants amend Claim 23 by deleting “such as” and reciting the group consisting of “baked goods, drinks, candy, gum, yogurt, ice cream, pudding and jelly.” Applicants believe that the amendment obviates the rejection. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 24. The Office alleges that claim 24 is unclear for reciting “internal medicine.” Applicants amend Claim 24 by deleting “internal medicine.” The Office’s rejection is thus mooted and should be withdrawn.

In view of the above amendments and arguments, claims 8, 23 and 24 should be allowed.

5. Rejection of the Claim under 35 U.S.C. § 102(e)

5.1 Claims 1-3 and 5-6 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Pihlava et al. (WO 02/062812A1) [hereinafter “Pihlava I”].

The Office rejected claims 1-3 and 5-6 under 35 U.S.C. § 102(e) as allegedly anticipated by Pihlava et al. (WO 02/062812 A1). Pihlava was asserted for allegedly disclosing “a process for preparing an SDG-rich food comprising the step of extracting a plant material containing SDG with a basic alcohol. The plant material is defatted flaxseed. The basic alcohol is sodium hydroxide-methanol.” Office Action, page 3.

Applicants traverse the rejection to the extent it applies to the claims as amended. Claims 1-3 and 5 as amended require a different set of steps than the steps taught and suggested by Pihlava. For example, the amended claims now require the use of a resin column, which is not taught or suggested by Pihlava. Additionally, there are fewer steps required, yet there is still a high purity SDG obtained. Because the claimed process as amended provides a more simple and rapid process for making high purity SDG, there is a commercial advantage to the presently claimed methods over the methods taught by Pihlava. Thus, as amended claims 1-3 and 5 are not taught or suggested by Pihlava, the rejection can be withdrawn and the claims allowed.

The process described by Pihlava is not capable of producing a product with such a high content of amino acids. Thus, the product of amended claim 6 cannot be taught or described by Pihlava. Thus, the rejection of claim 6 should be withdrawn.

In view of the above arguments and amendments, Applicants respectfully request withdrawal of the rejection of claims 1-3, 5 and 6 and allowance of the claims.

5.2 Claims 12 and 17-19 are rejected under 35 U.S.C. § 102(e) as being anticipated by Empie et al. (U.S. Pat. No. 6,391,308) [hereinafter "Empie"].

The Office rejected claims 12 and 17-19 under 35 U.S.C. § 102(e) as allegedly being anticipated by Empie et al. (U.S. Patent No. 6,391,308). Empie allegedly discloses "a food comprising SDG and isoflavone. The SDG is extracted from natural plant source including flaxseed." Office Action, page 3.

Without acquiescing as to the merits of the rejection, claims 12 and 17-19 have been canceled thereby mooted the rejection. The rejection accordingly should be withdrawn.

6. Rejection of the Claim Under 35 U.S.C. § 103(a)

6.1 Claim 4 is rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Pihlava I.

The Office rejected claim 4 as allegedly unpatentable over Pihlava. The Office asserted that while Pihlava does not disclose the concentration of alcohol claimed, it would have allegedly been "within the skill of one in the art to determine the appropriate concentration of alcohol to obtain the most optimum extract." Office Action, page 4. The

Office further asserts that “the amount of alcohol is a result-effective variable which can readily be determined by one skilled in the art through routine experimentation.” *Id.*

Applicants traverse the rejection to the extent it is applied to the claims as amended. Applicants assert that the Office makes conclusions without supportive analysis and basis. There must be some sort of teaching or motivation to vary the amount of variable. The mere fact that alcohol concentration is a variable that could be varied is an insufficient argument, absent teaching or motivation. The Office provides none.

Pihlava also fails to disclose or suggest that the concentration of extracted mucopolysaccharides is varied depending on the alcohol concentration of the eluate. Additionally, claim 4 depends from claim 1. Claim 1 is not anticipated by Pihlava for at least the reasons discussed *supra*. Thus, amended claim 4 also cannot be obvious in view of Pihlava. The rejection accordingly can be withdrawn and claim 4 allowed.

6.2 Claims 7-11, and 20-24 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Pihlava in view of Empie.

The Office rejects claims 7-11 and 20-24 under 35 U.S.C. § 103(a) as obvious over Pihlava in view of Empie. The Office admits that Pihlava does not disclose “adding the SDG-rich product to material for food and/or drink, the amount of daily intake of SDG, the amount of SDG in the food and the health benefits as claimed.” Office Action, page 4. The Office asserts that Empie discloses a composition comprising SDG and isoflavones. The composition is made in the form of pill, tablet, capsule, liquid or ingredient in a food including health bars. The composition has health benefits such as alleviating hot flashes [*sic*], osteoporosis, symptoms associated with menstruation and other health benefits. The composition may also be administered as a food supplement or as a food ingredient.” Office Action, page 4. The Office concludes that “it would have been obvious to one skilled in the art to add the SDG-rich product of Pihlava et al to food and drink to obtain the health benefits shown by Empie et al.” The Office further concludes it would have been obvious to add SDG to any food product or drink, or to vary the daily intake depending on the desired benefits. Office Action, pages 4-5.

Applicants traverse the rejection to the extent they are applied to the claims as amended. Claims 8-11 and 20-24 are directed to a food and/or drink containing the SDG-rich product of claim 6. Claim 7 stands canceled, thereby mooting that aspect of the rejection.

Claim 6 as amended fails to be taught by Pihlava for the reasons addressed *supra*. Empie does not cure the defects of Pihlava. Therefore, claims 8-11 and 20-24 cannot be obvious over Pihlava in view of Empie for the reasons asserted above. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of the claims.

6.3 Claims 13-16 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Empie.

Claims 13-16 stand rejected under 35 U.S.C. § 103(a). Without acquiescing as to the merits of the rejection, Applicants have canceled claims 13-16 thereby mooted the rejection. The rejection accordingly can be withdrawn.

CONCLUSION

In conclusion, this is believed to be in full response to the outstanding restriction requirement. Should any issues remain outstanding or if there are any questions concerning this paper, or the application in general, the Examiner is invited to telephone the undersigned representative at the Examiner's earliest convenience. Should any outstanding fees be owed or overpayments credited, the Commissioner is invited to charge or credit Deposit Account No. 50-0573.

Respectfully submitted,
DRINKER, BIDDLE & REATH LLP

Date: January 4, 2008

By: 

Mercedes K. Meyer, Ph.D., Esq.

Registration No. 44,939

1500 K Street, N.W., Suite 1100

Washington, D.C. 20005-1209

T: 202-842-8821

F: 202-842-8465